The Solicitors' Journal

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CURRENT TOPICS

The Law Society's Annual Conference

THE Annual Conference of members of The Law Society will be held this year at Eastbourne from Tuesday, 23rd September, to Friday, 26th September, both dates inclusive. At the 1951 Conference at Harrogate seventy-seven provincial law societies were represented and the Council hope that this year this figure will be exceeded and that there will be a larger attendance from London. The Council have issued a statement containing short particulars of the programme and full details will be published later. Members are asked to fill in and return an enclosed registration form as soon as possible, and in any event not later than 30th August, 1952. The arrangements include a reception, with dancing, a civic reception and welcome, discussions on selected branches of The Law Society's work and an address by the Society's distinguished guest. Among the entertainments are included a mannequin parade, a variety entertainment by well-known artistes, a dance, the solicitors' annual golf competition for The Law Society's Cup, and other sports.

The Law Society of Scotland

MR. D. L. BATESON, vice-president of The Law Society, proposing the toast of "The Legal Profession in Scotland," at the annual dinner of the Law Society of Scotland, held at Aberdeen on 28th March, remarked how glad The Law Society had been to co-operate with the Scottish Society in the joint committee on legal aid. Next year in London, he said, they were arranging an Anglo-French conference, and the connection between Scotland and France was such that he had been commissioned to tell them that they intended to ask Scottish representatives to join with them in that conference. LORD MACKAY, who responded to the toast, said that without the law and without the order the law produced we would not get the modern crowded State to run on even lines; his lordship added that there were some who might think that the lawyer was not only overpaid but should not be paid at all. The law was the cement of the house, the matrix in which the State was embedded, and those who laboriously practised it were people whose mentality and the energy they expended on thinking, and thinking aright if they could, were worthy of the fee they exacted. Mr. J. L. CLYDE, the Lord Advocate, also responded to the toast.

Postal Dispatch of Grants of Representation

IT has now been announced that the 1st May, 1952, will be the starting date for the new service whereby grants of representation arising from applications lodged by solicitors will be dispatched by post. Details of the arrangements were given at p. 33, *ante*, and need not be repeated here, but attention is drawn to the fact that at the Principal Probate Registry the new service is limited to the dispatch of grants and formal notification of any stop. Applications cannot be lodged by post nor can correspondence be entered into at the Principal Registry.

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Unenforceable Maintenance Deeds

THE *Law Society's Gazette* for April, 1952, notes that the Council of The Law Society draw attention to the Court of Appeal decision in *Bennett* v. *Bennett* [1952] 1 T.L.R. 400 that covenants by a husband to pay two annuities, one for his wife and one for his child, in consideration of his wife's covenant not to proceed with her application for maintenance included in her divorce petition, were unenforceable as being against public policy. The Council quote from the judgment of DENNING, L.J., in that case and say that, as there may be many cases in which payments have been made or received by clients under similar deeds, solicitors may wish to advise clients who have been parties to such deeds to apply to the Divorce Court for orders for maintenance in terms of the deeds to put the matter on a regular footing for the future. The Council are discussing with the Inland Revenue the effects of the decision with regard to the tax liability of husbands who have been making payments under such deeds.

Information as to Directors' Emoluments

THE Chartered Institute of Secretaries have, jointly with the Society of Incorporated Accountants and Auditors, recently taken counsel's opinion on what precise information auditors must require from company directors under s. 198 of the Companies Act, 1948, which deals with directors' emoluments, and on 4th April they published a summary of the opinion as follows: (*a*) When the directors have not made statements under s. 198 of the Act, the auditor should require them to be made, and this can best be done by asking a company's board to procure them. (*b*) When the directors have duly made written statements which contain (with the help of the company's books) the required information, the auditor is not reasonably entitled to require them to be made in a different form or to be certified in some particular way, e.g., by board resolution. (*c*) The auditor is entitled to check the statements against the company's books and other information and, if he has reason to doubt their correctness or sufficiency, to require further information and explanation from the director concerned or other officers of the company. (*d*) If the statements made do not contain the information necessary, the auditor can require that proper and sufficient statements be made. (*e*) Oral statements might give the auditor great difficulty, unless they had been promptly and formally recorded. The Chartered Institute of Secretaries state that counsel's conclusion is that while a director cannot be compelled to make a statement under s. 198 in any particular form, it is plainly desirable that the professional bodies concerned should agree upon a standard form which will give the required information as simply as possible and should try to secure its adoption as a matter of company routine. This course, counsel adds, would be in the interests not only of secretaries and auditors, but also of directors themselves, for they may be called on to prove at a later date that they did make a statement sufficient for the purposes of s. 198.

The Worshipful Company of Solicitors of the City of London

IN Newsletter No. 14, issued by the Worshipful Company of Solicitors of the City of London for the month of February, it is recorded that at their February meeting the Court passed a resolution that they desire humbly to tender to HER MAJESTY QUEEN ELIZABETH II their deepest sympathy on the death of His Majesty King George VI and to express to Her Majesty their loyal homage on her accession to the Throne. The Newsletter states that there are now 296 Liverymen and 109 Freemen, making a total membership of 405. As a result of the matter of purchase tax on proof prints being raised by the then Master (Mr. P. R. JOHNSTON) at the last annual meeting of Liverymen and Freemen, a meeting took place between representatives of the Council of The Law Society and the Commissioners of Customs and Excise at which a representative of the Company was present. As a result, the Board of Customs and Inland Revenue has provisionally agreed with the printing trade the following revised footnote for page 71 of their Notice No. 78: "Copies of incomplete documents for execution (i.e., Memoranda and Articles of Association, Deeds, Agreements and the like) made for a solicitor or other person from his own draft specially prepared for one particular case and incorporating the names of all the parties concerned are not regarded as chargeable stationery nor are proofs of such documents." The Company state that they have given their support to the new proposals for the recasting of The Law Society's conditions of sale in the belief that the policy which the new conditions seek to implement will be acceptable to the profession. If in fact these conditions are finally embodied in the new edition of the Society's Conditions of Sale, members will be asked to co-operate by using the Society's form of Conditions and by not striking out the particular conditions concerned, because the fact that several weeks may elapse before a binding contract is entered into is a serious disadvantage and one which may encourage the highly undesirable practice of the preparation of binding contracts by estate agents.

Nottingham Incorporated Law Society

THE seventy-seventh Annual Report of the proceedings of the Nottingham Incorporated Law Society for the year 1951 shows that the Society now consists of 184 members. Nine thousand seven hundred and seventy-three copies of the Society's conditions of sale were sold during the year as against 9,211 during the previous year. One hundred income tax apportionment forms were sold during the year as against 175 in the previous year. The report also states that during the first year of operation of the Legal Aid and Advice Act ending on 30th September, 1951, the Nottingham Local Committee received 870 applications, of which 701 were granted and 63 refused; 605 certificates were issued. Just under 85 per cent. of the cases were divorce, and most of the remainder running down cases or cases arising out of accidents at work. Twenty-two meetings of certifying committees were held, about thirty-five cases being dealt with at each sitting. Referring to the Solicitors' London Agents' Association's resolution of last November with regard to their charges, the report states that the question of agents' charges in legal aid cases is to be placed on the agenda for discussion at the next general meeting of Associated Provincial Law Societies, and that Association has suggested that, pending such discussion, country solicitors should not enter into any agreement with London agents on this question. The report further states that the Council recommend that the name of the Society be changed to "Nottinghamshire Law Society" in view of the substantial number of country members.

Release of Persons under Committal for Contempt

THE *Law Society's Gazette* for April states that, notwithstanding the note in the Annual Practice under Ord. 44, r. 1, the judges of the Chancery Division have directed that the proper procedure to obtain the release or discharge from prison of a person under committal or attachment for contempt of court is by way of motion. It is stated that this direction is not to preclude the Official Solicitor from proceeding by way of summons if he is prepared to justify his action in so proceeding.

CARAVAN LAW—I

ONE of the major social developments since 1945 has been the rapid growth of what can now be legitimately described as "the caravan industry." The caravan has, of course, long been a feature of the English country scene, as the home of the gipsy or "Romany." That is a separate problem, and we are in this article concerned mainly with the urban dweller who has acquired a caravan for one of two purposes: either for use at week-ends and holidays, in which case he is now referred to as a "recreational caravanner," or for use as a permanent abode, when he is termed a "residential or static caravanner." There is, however, a third class of caravan problems to be dealt with, and those are the difficulties which arise in connection with caravan *sites*, which are erected and equipped by "developers" whose aims are either to provide caravans on the sites or to let the sites to persons who own their own caravans. These sites can be further sub-divided into those at seaside resorts and intended only for seasonal occupation, and those in the large inland centres, which are intended to provide the means of permanent residence.

It is particularly at this time of the year that the caravan users are going out into the countryside and a number of problems arise for consideration in this connection, quite apart from the legal difficulties which are of a more permanent nature. Is any legal wrong committed by a caravanner who draws off the road for the night? How long can a caravan remain without attracting statutory liabilities in respect of public health or planning? From the farmers' point of view—to what extent and over what period of time can he turn this new development to profit in the summer months without involving himself in licences and permissions, rates and taxes?

It is proposed in the first instance to deal with the problems of the "recreational caravanner," who is generally regarded as the true example of the caravan enthusiast, and, in the course of so doing, it will be apparent that, since there is no separate legislation distinguishing him from the residential caravanner, many of the propositions enunciated will apply to the latter as well. A convenient method of approach is to observe and deal with the problems as they arise. First there is the question of the enthusiast who decides to build his own caravan in his own drive or front or back garden. Plans and materials for this type of hobby are widely advertised in the appropriate periodicals and it can be seen to be happening quite widely in suburban districts. Does this type of operation constitute "development" of the dwelling-house so as to attract the provisions of the Town and Country Planning Act, 1947? And does it make the premises a "factory" for the purposes of the Factory Acts? So far as planning is concerned, the answer depends whether or not it is held that there has been a "material change of use." It is submitted that it would not be so held where only one caravan was constructed, but if the householder sought to turn his skill to profit by making and selling the results of his hobby, then obviously there is a change of use. The Factories Act, 1937, s. 151, defines a factory as including "any premises in which, or within the close or curtilage or precincts of which, persons are employed in manual labour in any process for or incidental to any of the following purposes, namely (*a*) the making of any article or of part of any article." Thus, if it became necessary to employ skilled labour in, say, installing the electrical system in the caravan, then the operation would probably attract the Factories Acts.

Having completed the caravan, the householder will want to know whether he can park it in his drive during the seasons. On this there is the authority of the Minister reported in Bulletin of Planning Decisions IX, 18. The applicant asked for a determination that such parking in the drive or garden did not constitute development or require an application for planning permission. The council decided it fell within the words "or other operation" in s. 12 (2) of the 1947 Act and therefore was development. The Minister held on appeal that, so long as the caravan was kept on the premises during the intervals of holiday travel and not for residential use or for purposes of hire or sale or display for hire or sale, he could see no material difference between parking a caravan and parking a motor car within the curtilage of a dwelling-house. It was not development and did not require permission.

When the owner hitches the caravan on to his car, a new crop of problems arises. First, he may use a device known as a "dolly." This is a wheeled link between the car and the caravan. On 5th December, 1949, two summonses were heard against a Mr. Whittingham brought by the Metropolitan Police. It was alleged that he had exceeded the 20 m.p.h. speed limit in towing either two trailers or a four-wheeled trailer. For the defendant it was argued that the dolly was not a trailer itself, nor did it convert a two-wheeled trailer into a four-wheeled trailer. This view was upheld, i.e., the speed limit applying is 30 m.p.h. not 20 m.p.h. The length of a trailer and the total length of a car and trailer are governed, as are also a number of other important points, by the Motor Vehicles (Construction and Use) Regulations, 1951. These regulations lay down maximum laden weights, and it is a matter of argument as to when a caravan is "laden" and whether it has a separate "laden" and "unladen" weight. Again, the Road Vehicles (Registration and Licensing) Regulations, 1949, enabled the holder of a general trade licence to use the vehicle concerned to draw a trailer for the purposes for which the licence was issued. In the case of *Telliff* v. *Harrington* [1951] 1 All E.R. 384, the licence had been issued in connection with the respondent's business of "a repairer of and dealer in mechanically propelled vehicles." He used the vehicle to tow a caravan to a customer who had purchased it. The magistrates held that this was not an unauthorised user, but the Divisional Court held that, a caravan not being a mechanically propelled vehicle, the licence could not cover the use in question. The 1949 regulations are now replaced by S.I. 1951 No. 1381, which have been redrafted to cover the point.

Having got out into the countryside, the next problem is, where can the holiday-makers stop for the night? It can be said at once that in the United Kingdom all land belongs to someone, and there is no land at all on which, in law, a person may camp without permission from either the owner or the occupier. There is no right of camping on common land. Under s. 193 of the Law of Property Act, 1925, it is true that the public is given rights of access to metropolitan commons, manorial wastes and commons within borough or urban districts, but subs. (1) (*d*) expressly provides that "such rights of access shall not include any right to draw or drive upon the land a carriage, cart, caravan, brake or other vehicle, or to camp or light any fire thereon." It should also be noted that the Road Traffic Act, 1930, s. 14, also prohibits the driving of a car "without lawful authority" on to "any common land, moorland, or other land of whatsoever description (not being land forming part of a roadway)." Neither is there any right to camp on roadside verges. It is well established that such verges outside the boundary hedges or walls of the frontage properties are deemed to be part of those areas which the owners have dedicated for the highway. There is thus only the usual right of passage

attached to the highway and camping would constitute a trespass. There is also a provision in the Highway Act, 1835, under which gipsies are frequently prosecuted, making it an offence for any "hawker, higgler, gipsy *or other person travelling*" to "pitch any tent, booth, stall or stand, or encamp upon any part of the highway."

When the caravanner approaches a farmer or other owner or occupier of land for permission to park the caravan, the latter may be quite willing to give permission, but may be a little dubious as to his own legal position if he does so. This is governed by the Public Health Act, 1936 (except where the local authority have not operated this Act, but still make use of a local Act), the Housing Act, 1936, and the Town and Country Planning Act, 1947.

To take the Public Health Act first. This prohibits by s. 269 the use of land for camping purposes on more than forty-two consecutive days, or more than sixty days in all, in any twelve consecutive months, unless a licence has been obtained from the local authority. Such licence may take one of two forms: it may be either a licence "authorising persons to allow land occupied by them within the district to be used as sites for movable dwellings," or it may be a licence "authorising persons to erect or station and use movable dwellings." It will be seen that type 1 is issued to site-owners, type 2 to site-users direct. It is not necessary to have both types of licence issued for the same site, but an occupier of land cannot, except within the time limits or tolerances stated above, permit his land to be so used unless he has a type 1 licence or all the occupiers of movable dwellings on the site have a type 2 licence. Conditions may be, and usually are, attached to the issue of these licences. Type 1 may limit the number and classes of movable dwellings which can be maintained, the spacing of them, and the supply of water and sanitation. Type 2 may contain conditions relating to the use of the particular "movable dwelling" concerned, the spacing, removal at the end of a specified period, and sanitation.

With regard to the marginal period before licensing control operates, it is to be noted that it is the total use of the land "for camping purposes," not the stay of any one particular dwelling, that matters. A change of site does not terminate a period of use unless it is to another site one hundred yards or more away from the first site. For the purposes of the forty-two-day tolerance, removal of a movable dwelling for less than forty-eight hours is to be ignored.

Section 269 also provides that the local authority must notify the refusal of an application of a licence, or state the conditions upon which a licence will be issued, within four weeks of the receipt of the application; otherwise they are deemed to have issued an unconditional licence. An applicant aggrieved by refusal of a licence or by any of the conditions attached to its issue can appeal within twenty-one days to a court of summary jurisdiction. It is noteworthy that among the exemptions from control by s. 269 are movable dwellings which are kept by their owners on land occupied by them in connection with their dwelling-houses and occupied only by them or by members of their households.

We now come to consider the position of those organisations to which the Minister has issued a "certificate of exemption" from the provisions of s. 269 under subs. (6) thereof. These certificates are issued to organisations which satisfy the Minister (*a*) that the sites belonging to or provided by them, or used by their members, are "properly managed" and kept in good sanitary condition, and (*b*) that the movable dwellings used by their members are used in such a manner that they do not give rise to any nuisance. The issue of such a certificate to an organisation has the same legal effect as if a licence had been issued of type 1 to any occupier whose land is used by its members, or a licence of type 2 to each of its individual members permitting him to park the caravan on any land. Among the organisations to which certificates have been granted are the Caravan Club and the Camping Club, the Boy Scouts' and the Girl Guides' Associations.

The wide exemption thus given has, however, been drastically curtailed as a result of conditions imposed on it by the Minister acting through the organisations. They have, by their constitutions, bound themselves not to make use of the exemption: (*a*) when camping on a site conducted on commercial lines; (*b*) when camping for more than forty-two consecutive days on *any* site unless it has been specially approved for this purpose by the organisation; (*c*) when occupying any structure other than a *bona fide* caravan or tent. It may be of interest to practitioners who may be called on to advise on these matters to note some of the practical effects of the exemptions and their limitations.

(1) A member of an approved organisation can have a private base site without licence for use in between his week-end trips and holiday tours. So long as no one stay on the base site exceeds forty-two days, he can keep the van there throughout the year.

(2) Suppose a casual, i.e., non-commercial, farm site is visited at the same time by two caravanners, one of whom is a member of an approved organisation. If the site has been used already for forty-one days, but has been approved by the organisation, then the member can himself stay on the site forty-two days without a licence, whereas the non-member (and all earlier residents) must be turned off the site, unless a licence had been issued.

(3) Where a member visits a similar site which has already been used for sixty days within the last twelve months, he can be admitted whereas others would have to be turned away.

The maximum penalties for breach of s. 269 are £5 and 40s. for each day that the offence continues after conviction. In some cases, of course, commercialised caravanning has reached such proportions that these fines are ludicrous. A case is reported of an unlicensed site which took £450 *a night*.

Of recent years there have been many appeals to magistrates' courts against refusal of licences on grounds totally unconnected with public health, e.g., damage to amenities (for example, in February, 1950, Steyning (Sussex) magistrates upheld a proposal to establish a caravan site close to a boating-pool at Bramber, which had been rejected by the Chanctonbury Rural District Council on the ground that the site would damage the amenities and that there were already enough sites in the district: the appellant told the magistrates that the site would be confined to members of the Caravan Club), or prior existence of other sites in the neighbourhood, and usually the magistrates have upheld the refusal. The matter was clarified in *Pilling* v. *Abergele Urban District Council* (1950), 66 T.L.R. (Pt. 1) 166. The appellant had been refused a licence to use a field as a site for caravans on the grounds that it would be "detrimental to the amenities of the district particularly on account of the close proximity of other dwellings." Lord Goddard interpreted this as being a refusal "on town planning reasons" and allowed the appeal. The magistrates, he said, did not have an unlimited discretion as to the grounds on which they could refuse the appeal—they must confine themselves to considerations of public health and sanitation. An example of refusal on a completely extraneous ground was that of Malton (East Yorkshire) Urban District Council, who refused permission for a site for one caravan on the ground that the occupiers would then

become residents in the district and would thus acquire a claim to a place on the waiting list for council houses.

It will be noticed that there is a difference between the sorts of conditions which can be attached to the two different types of licences. Local authority associations are known to have taken the opinion of counsel to the effect that there is no power to attach conditions other than those expressly mentioned in the statute, and that a type 1 licence once granted cannot be revoked because there is no power to attach a time limit to the licence. This has naturally resulted in great reluctance to grant that type of licence. Another view was expressed, however, by the Minister of Health in 1947, when in a letter to an exempt organisation he said that local authorities had "power to grant or withhold licences subject to such conditions as they think fit." It is also arguable that a right to revoke is inherent in the right to grant a licence. The point has never been before the court as to whether a type 1 licence is a licence coupled with an interest. If that be so it would, it is submitted, be irrevocable. In actual fact, some local authorities do attach time limits to type 1 licences and the right has never been challenged in court, though it was once asserted by Flintshire Quarter Sessions to exist. It is noteworthy, however, that the same court, when granting a licence which had been refused by the local authority (Prestatyn), attached conditions concerned with town planning and amenity, which would seem to be clearly wrong in the light of the decision in *Pilling* v. *Abergele U.D.C., supra.*

Another undecided matter concerns the word "site." It will be recalled that to escape the forty-two and sixty-day limits, caravans must not be parked within a hundred yards of a "site" which has already been used. The word "site" is not defined in the Act. Does it mean only the area covered by the actual van (better known as "the pitch"), or does it include a certain amount of land around the pitch? Some think it may cover the whole field or unit of land, others that it covers all the land which is in one occupation.

When refusing an application an authority are not obliged to give reasons, and *Pilling* v. *Abergele U.D.C.* will encourage them not to do so in order that they may receive the benefit of the doubt at the hands of the Divisional Court. Courts have on occasion, however, rebuked local authorities for adding to applicants' difficulties or encouraging useless appeals by withholding this information, and in one case at Brighton the authority were deprived of costs for this reason. No doubt, however, on appeal to the High Court disclosure of reasons could be compelled, and a local authority who had deliberately flouted the law by reaching a decision on wrong reasons, and then deliberately concealing their reasons, would find themselves in great difficulty.

It is interesting to note that in March, 1950, a licence was granted for four caravans to be sited in a built-up part of Windsor by the public health committee of the town council, but planning permission was refused by the town planning committee. The public health committee had stated that they did not like the proposal, but had no public health reason for refusing a licence.

It should, however, be remembered that some seventy local authorities have local Acts containing clauses governing the use of movable dwellings, and in their districts the Public Health Act system of licensing does not apply.

Under s. 249 of the Local Government Act, 1933, local authorities may make byelaws "for the good rule and government" of the area and "for the prevention and suppression of nuisances therein." Breaches of such byelaws are punishable by fines in courts of summary jurisdiction. The model byelaw approved by the Ministry of Health with regard to moveable dwellings provides that "no gipsy, squatter or other such person dwelling in a tent, booth, shed or similar structure shall occupy any land within 300 yards of any dwelling-house so as to cause injury, disturbance, or annoyance to the inmates of such house, after being requested to depart by any inmate of the house, or by his servants, or by any constable on his behalf."

Section 268 of the Public Health Act, 1936, can also be applied to modern caravanners although based on an Act of 1885, long preceding the rise of modern caravanning. It declares that any tent, van or shed used for human habitation shall be a "statutory nuisance" if it is "in such a state or so overcrowded" as to be prejudicial to the health of the inmates, or if, by reason of inadequate sanitation, it gives rise, whether on the site or otherwise, to a nuisance or to conditions prejudicial to health. Abatement notices can be served on the occupier of the land (unless he did not authorise the use), and, if they are not obeyed, application can be made to the magistrates' court for a nuisance order.

The Housing Act, 1936, deals with movable dwellings to some extent. Under Pt. II of the Act provisions are made for the maintenance or demolition of individual insanitary dwellings, and under Pt. III clearance can be ordered of areas in which conditions are injurious to health. Section 23 provides that references to a "house" include "a hut, tent, caravan or other temporary or movable form of shelter" which is used for human habitation and has been in the same enclosure for two years before action is taken under the Act. It seems that the structure need not have been in use as a human habitation during the whole of the two years. Section 9 of the Act enables an authority who consider a dwelling unfit for human habitation, but are satisfied that it can be made fit at reasonable expense, to order the carrying out of such work. If they think it cannot be rendered fit at reasonable expense, then a demolition notice may be served. In either case an appeal lies to the county court. It would appear that the provisions of Pt. IV of the Housing Act (overcrowding) have no application to movable dwellings.

With regard to clearance areas, s. 26 (8) enacts that, in relation to "buildings included in an area to which a clearance order applies, references to a building shall include references to a hut, tent, caravan or other temporary or movable form of shelter" which is used for human habitation and has been in the same enclosure for a period of two years before action is brought. An important point, however, is that, although caravans within a clearance order would be caught along with other "buildings," an area cannot in the first instance be declared a clearance area unless the "houses" in the area are unfit for human habitation. Thus an area could not be declared a clearance area simply because it consisted of a colony of huts, tents, caravans, etc.

Notwithstanding, in 1946 Worthing Rural District Council asked for a clearance order in respect of fifteen "caravans" at Angmering. The Minister of Health refused to confirm the order on the ground that this was not the most satisfactory method of dealing with conditions in the area. Counsel for the owners contended that the structures were "movable dwellings," and that the council had entertained applications for licences, but had refused them. Section 26 (5) provides that, once a clearance order has been made, no hut, shed, caravan, etc., may be placed on the land except with the permission of the local authority and under such conditions as they think fit. This prevents occupation of cleared sites pending new building.

G. H. C. V.

A Conveyancer's Diary

A STRANGE EDUCATIONAL TRUST

THE testatrix in *Re Shaw's Will Trusts* [1952] Ch. 163 was the wife of George Bernard Shaw, a lady of Irish extraction but long resident in England, and her will was therefore one to be construed according to our law. By her will she left her residuary estate upon an agglomeration of trusts, the purport of which showed her to be a woman of strong convictions and, perhaps, somewhat eccentric character. The clause of the will which defined these trusts commenced with certain recitals. These were to the effect, first, that the testatrix was desirous of promoting and encouraging in Ireland (that is, the Irish Free State) the bringing of masterpieces of fine art within the reach of the Irish people of all classes, so that they could study such masterpieces and acquire a fuller knowledge thereof; and the testatrix defined "masterpieces of fine art" for this purpose as including, in effect, works of music, painting, sculpture, fine printing and literature originating in any country and at any period in the world's history. The testatrix went on to say that in the course of a long life she had had many opportunities of observing the extent to which the most highly instructed and capable persons had their efficiency defeated and their influence limited for want of any organised instruction and training for the personal contacts, whether with individuals or popular audiences, without which their knowledge was incommunicable (except through books), and how the authority which their abilities should give them was made derisory by their awkward manners, and their employment in positions for which they had valuable qualifications was made socially impossible by vulgarities of speech and other defects "as easily corrigible by teaching and training as simple illiteracy." Finally, she observed that observations had convinced her that lack of such training produced social friction, and that social intercourse was a fine art with a technique which everybody could and should acquire.

After these recitals there followed a direction that the special trustee whom she had appointed for the purpose of carrying these trusts into execution should pay or apply the income of her residuary estate in perpetuity to or towards the objects subsequently set forth in the trustee's absolute discretion. The objects were then defined under three heads. The first of these was, in effect, the making of grants and payments to any institution or fund which was either in existence at the date of the testatrix's death or which would come into existence within a defined period, having for its objects the bringing of the masterpieces of fine art within the reach of the people of Ireland of all classes in their own country, provided that no such institution or fund should be eligible if it was not of a public character or, in effect, other than a strictly non-profit-making organisation. The second of these objects was "the teaching, promotion and encouragement in Ireland of self-control, elocution, oratory, deportment, the arts of personal contact, of social intercourse, and the other arts of public, private, professional and business life." The last object was the establishment and endowment, again within a specified period, of any educational institution or any chair or readership in any university, college or educational institution for the purpose of giving instruction in, or promoting the study by the general public of, the subjects mentioned above or any of them.

The question which the court had to decide on this will was whether these trusts were good trusts for the advancement of the education of the Irish people or not, for if they were not, they plainly infringed the rule against perpetuities and were void for that reason. The portion of what Vaisey, J., called "this welter of words" which gave him the most difficulty was that which has been set out verbatim above, but the whole of the clause which contained these trusts was attacked as being too vague to be the subject of an effective charitable trust. This view the learned judge rejected, and before he reached his conclusion a number of authorities on educational trusts were examined, from which his lordship expressed himself as having derived assistance. But these cases, while they deal with certain of the qualities which a trust must possess if it is to be rated as a good educational trust, in the charitable sense, do not define, or attempt to define, the fundamental requirements of such a trust. Perhaps that is now impossible. The preamble to 43 Eliz. c. 4, which enumerates the objects for which valid charitable trusts may be created, mentions only three objects with an educational flavour—schools of learning, free schools and scholars in universities. The diverse objects brought together in this preamble were grouped by Lord Macnaghten under four much more comprehensive heads—the relief of poverty, the advancement of education, the advancement of religion, and other purposes beneficial to the community; but although this grouping of charitable objects has proved enormously convenient for writers of text-books on charitable trusts, it has not, of course, done anything to rationalise the law relating to such trusts, which so far as this kind of problem is concerned is entirely case law and is quite extraordinarily diffuse. The problem before the court in this case was, therefore, a very wide one and the principles by which it had to be resolved were also anything but narrow.

In *Re De Noailles* (1916), 114 L.T. 1089, Eve, J., rejected the view that the only object of education is to get information: "the mere stuffing of information into a boy or girl may make them very priggish, but it does not make them of much use in life, unless they know how to apply that information for the purpose of becoming useful citizens" (p. 1094). The fact that the trusts in the present case did not envisage the inculcation of mere information into the people of Ireland or any section of them, and that one of the purposes which the testatrix had in mind was, as was suggested in argument, the provision of a sort of finishing school for the Irish people, were not therefore circumstances which necessarily had the effect of depriving the trusts of their educational character, using that word in the sense in which Lord Macnaghten used it when he spoke of the advancement of education being a charitable purpose. Again, that æsthetic education (which was one of the two principal purposes of the trusts in this case, the other being the national finishing school, if one may so phrase it) is a branch of education is shown by the decision in *Royal Choral Society* v. *Inland Revenue Commissioners* (1943), 112 L.J.K.B. 648, in which Lord Greene, M.R., dealt with the argument that in the domain of art the only thing that can be educational in a charitable sense is the education of executants in this manner (p. 651): "I protest against that narrow conception of education when one is dealing with æsthetic education. Very few people can become executants, or at any rate executants who can give pleasure either to themselves or to others; but a very large number of people can become instructed listeners with a trained and cultivated taste. In my opinion, a body of persons established for the purpose of raising the artistic taste of the country . . . is established

for educational purposes, because the education of artistic taste is one of the most important things in the development of a civilised human being." Lastly, *Re Central Employment Bureau for Women and Students' Careers Association Incorporated* [1942] 1 All E.R. 232 was cited for the view there expressed by Simonds, J. (as he then was), that for the purpose of determining whether a trust is an educational trust in the charitable sense there is no essential distinction between education in general terms and education for a particular purpose (although, of course, a given particular purpose, in this connection, may be such as to vitiate the generally charitable quality of trusts for education, if it is too narrow, or if it should offend for other reasons not immediately concerning the law of charitable trusts).

With these decisions, and some others of less general interest, as a guide, Vaisey, J., in the present case, expressed the view that education, for the purpose under consideration, included not only teaching in the narrow sense of the instruction given by a master or mistress in class, but the promotion and encouragement of those arts and graces in life which, in the learned judge's view, were "perhaps the first and best part of the human character." He expressed no personal views about this kind of education, such views being quite irrelevant, but his conclusion was that the education of the Irish people envisaged by the testatrix was of a desirable sort which, if connected and amplified by other kinds of instruction, might have most beneficial results.

There is no report of the arguments in this case, and I cannot therefore say whether the comment that springs to my mind in connection with this strangely serious-minded trust has been made before or not; but the value of deportment did not escape the notice of William of Wykeham when he founded two of the most celebrated educational establishments of the late Middle Ages. However, he expressed his belief in its value rather more tersely than did Mrs. Bernard Shaw.

"A B C"

Landlord and Tenant Notebook

VOLUNTARY ABSENCE OF STATUTORY TENANT

THE "Notebook" last referred to the *animus revertendi* element in rent control matters on 19th January last (96 SOL. J. 39) in connection with a question, at issue in *Middleton* v. *Bull* [1951] 2 T.L.R. 1010 (C.A.), whether the daughter of a deceased protected tenant had qualified for a tenancy by "residing with" her mother for the requisite period of six months. I observed then that, while dismissing her appeal, the Court of Appeal had intimated that physical absence might be compatible with such residence, Denning, L.J., instancing a sailor son away on a voyage, or a daughter who was a probationer nurse. This would mean considerations similar to those examined when it is alleged that a statutory tenant has lost protection by non-residence, such residence having been made a condition of such protection by the interpretation placed upon s. 15 (1) of the Increase of Rent, etc., Restrictions Act, 1920, though that subsection does not actually mention residence at all.

The effect of the numerous decisions on the meaning of the subsection may be said to be that if the tenant can give a satisfactory explanation of his absence, showing that it is intended to be temporary, no order for possession will be made against him or the occupants of the dwelling-house, and that the circumstances in which any third party has come to occupy the dwelling-house are evidence of the *bona fides* of the avowed intention to return, otherwise known as the *animus revertendi*.

The latest decision illustrating this is *Dixon* v. *Tommis and Another* [1952] 1 All E.R. 725; 96 SOL. J. 196 (C.A.), an action for possession in which the defendants were father and son. The father had become statutory tenant of the house claimed when a notice to quit expired in October, 1951, the contractual tenancy dating from 1914. Since 1937 he had been slowly building himself a house elsewhere, and in August, 1951, though the work was not finished, had moved to it, with his wife and daughter; and the second defendant, with his wife and child, had moved to the house claimed. The first defendant had left some of his furniture in the house claimed.

The explanation was this: the first defendant was a teacher and would have to retire on a pension, amounting to but a third of his present income, in three years' time. He would then be unable to afford to keep the new house. The county court judge decided the question of *animus revertendi* in his favour, and in the Court of Appeal, Jenkins, L.J., held that the facts of intention and sufficiency thereof were eminently questions for the court below, though the first defendant might have been "fortunate" in securing the finding; and Evershed, M.R., agreed that the learned county court judge might well have come to a conclusion on the facts adverse to the defendants, but also that there was evidence to support the finding.

The appellant sought to make something of a "constructive possession" point, as it came to be called; it was urged that the first defendant could not and would not be able to return however much he might want to, and the court was reminded that in *Brown* v. *Brash and Ambrose* [1948] 2 K.B. 247 (C.A.) Asquith, L.J., had used the expressions "*animus possidendi*" and "*corpus possessionis*," emphasising that mere desire to return was not enough. But the first defendant's evidence that he had left his son in the house as caretaker had not been cross-examined to, so the point failed. Incidentally, if the two defendants had wished to co-operate with a view to anticipating the claim, they could, provided that the 1914 grant did not restrict alienation, have set the plaintiff a difficult if not impossible task by creating a sub-tenancy of part of the house; though it was not till some two months later that Denning, L.J., adverted to the efficacy of such a device at the conclusion of his judgment in *Lewis* v. *Reeves* [1951] 2 T.L.R. 958 (C.A.).

Perhaps the most interesting feature of the new authority is the recognition of degrees of *animus revertendi*; I do not think that this characteristic has been so strongly brought out before. There have been numerous recorded decisions illustrating the principle, and there seems to be little point in attempting classification, but it may be a good thing, when confronted with a problem of this kind, to begin by considering why the tenant left home. In the recent case the learned Master of the Rolls remarked that the absence was a purely voluntary act and had not been occasioned by the necessities or conveniences of his business, this, of course, being a fact adverse to the defence. But the authorities as a whole do not suggest that the degree of volition accompanying departure can have much to do with the question of *animus revertendi*. The tenant in *Brown* v. *Brash* [1948] 2 K.B. 247 (C.A.), who sued a purchaser from his

landlord, had undergone a two years' sentence of imprisonment; but it was held that his statutory tenancy had continued until his mistress, who had shared the house with him, left with most of the furniture; his departure was voluntary in the sense only that he had deliberately committed the theft leading to the change of residence. One can contrast with him the tenant in *Wigley* v. *Leigh* [1950] 2 K.B. 305 (C.A.), who went to live in Ireland when her husband was sent to the Orkneys as a soldier. As long as the circumstances of departure are consistent with intention to return, it does not seem to matter how willing or unwilling the tenant was to leave.

More important is the question of how long the absence is, or is likely to last; and in *Dixon* v. *Tommis* attention was drawn to a passage in Asquith, L.J.'s judgment in *Brown* v. *Brash*: "to suppose that he can absent himself for five or ten years or more by simply proving an inward intention to return after so protracted an absence would be to frustrate the spirit and policy of the Acts . . ." This was interpreted by Jenkins, L.J., in the recent case as meaning that provided that there were sufficient *indicia* of the *animus revertendi* and *corpus possessionis*, a *prima facie* conclusion, drawn from the length of absence, that possession had been abandoned would be ousted. The defendant in *Dixon's* case was in a position to say, with reasonable confidence, how long his absence would be; an almost equally accurate forecast (remission for good conduct being perhaps an imponderable) could have been made by the plaintiff in *Brown* v. *Brash*. But there appears to be no reason to suppose that such predictability is a condition precedent to retention of possession. Seafarers have been cited as hypothetical protected tenants, by Scrutton, L.J., in the leading case of *Skinner* v. *Geary* [1931] 2 K.B. 546 (C.A.) (a sea captain who is absent for months, it may be, but in fact returns between his voyages to his house and has his wife and family living there while he is away); and by Denning, L.J., as mentioned in my first paragraph. Scrutton, L.J.'s "it may be" points to uncertainties which are sometimes features of a seaman's vocation, and goes to negative a suggestion that the member of the crew of a cross-Channel boat would be protected while protection would be lost by a Drake or a Scott. Ulysses might be said to have enlisted "for the duration" which turned out to be ten years, and then to have spent the like period in trying to get back; but there is much evidence of more than "an inward intention to return after so protracted an absence."

The relevance of ability to return, though touched upon in *Brown* v. *Brash*, has not, I think, been fully or satisfactorily considered yet, except in connection with destruction or loss of identity of the premises themselves. "A man's possession of a wild bird, which he keeps in a cage, ceases if it escapes, notwithstanding that his desire to retain possession of it continues," observed Asquith, L.J., in *Brown* v. *Brash*, going on to hold: "We do not think . . . that it is open to the tenant to rely on the fact of his imprisonment as preventing him from taking steps to assert possession by visible action." True, this may not mean that the plaintiff has been the author of his own misfortune and must suffer for that reason; but the house was there, and the point was that if the mistress and furniture had not left, protection would have outlasted imprisonment. Yet—instancing another seafarer—could the Flying Dutchman have "retained possession" by leaving his clogs at home, like a railway passenger leaving his hat on a seat?

R. B.

HERE AND THERE

MARRIED WOMEN'S SCHISM

NOT being a married woman I find it rather hard to follow the lines of the schism which has split the Married Women's Association and brought into being the Council of Married Women. Which is orthodox and which is heretical no mere outsider would dare to hazard a guess, still less which is Pope and which is anti-Pope—the seceding head of the former true Church, a lady Q.C. who is a widow, or her first successor, a solicitor who is a married man? The main line of cleavage, so far as it emerges from the swirling dust clouds of the controversial battlefield, would appear to be that the M.W.A. (forgive this lapse into the current semi-literate fashion of initials) wants a fifty-fifty sharing of the income of the spouses, while the C.M.W. wants a "reasonable amount" of the family income for the wife (and presumably the husband). I have not under my hand any statistics indicating what proportion of the married women of Britain are members of one or other of the contending organisations nor, for the matter of that, what proportion of the members of the organisations are married women, though, just for the record, it would be useful to know from how many snow-white throats, bound, it would seem, with the collar of economic serfdom, is issuing the clarion call, "We, the married women of England!" and how many of their sisters fall into the category of "don't know and don't care." Anyhow, until the ladies (and gentlemen) in the arena have settled what they really do want, it would appear to be premature to start tinkering legislatively with the delicate machinery of domestic relations.

THE ECONOMIC FALLACY

WHAT strikes the disinterested outsider as more than a little odd is, first, the concentrated preoccupation with the economics of marriage as if that were the central aspect of the married state, and, secondly, the somewhat naive faith in the efficacy of legal remedies in the solution of personal problems. Take each in order. Marriage, of course, like every other human relationship, has its economic aspect, but it's neither the beginning nor the end nor the heart of the matter. An energetic lady in one of the warring camps proclaims that a wife is an asset and not a dependant and clamorously demands that this should be recognised in law. But if it is insisted that one should employ the totally inadequate vocabulary of the balance sheet to formulate the fundamental relationship by which the human race, with all its grandeur and its pathos and its laughter and its unpredictability, lives and moves and perpetuates itself, a wife is emphatically not an asset. She is, like the children she conceives, a hostage given to fortune. Unless she is an heiress or a substantial salary earner, can any woman claim that her husband would not be immeasurably better off economically without her? He would be freer to spend his own money in his own way with fewer and simpler wants and far, far more resources to satisfy them. His clothes could be seen to and his food prepared at a far cheaper rate than the upkeep of a wife at its most economical. Sometimes the spiritual heiresses of the suffragettes hurl at men the taunt that they marry to secure an unpaid housekeeper. They are living mentally out of this world, behind the times in the spacious past of their mothers and grandmothers. In the precarious present what sensible man needs or wants the burden of a house unless pushed by the necessity of having to put a wife somewhere? And if he (quite unaccountably) does want a housekeeper how much more satisfactory economically it is to have one whose demands are predictable and limited within the four corners of the law of contract and who is sackable when he feels he wants a change. No, the brutal truth is that as an economic asset the average wife hasn't a leg to

stand on. So let's drop the balance sheet approach. For the man the only justification for marriage (and it is the best justification in the world) is that tender passionate flame which the woman kindles in him and must somehow keep alive unless their union is to fail most miserably, and she won't do that on the mentality of a chartered accountant, an inspector of taxes or a first mortgagee.

THE BLUNT INSTRUMENT

THEN there's the total inadequacy of the law to deal with that most delicate and precariously balanced organism which marriage brings into being. It is no denigration of the law to recognise its limitations, to admit that there are some functions which are within its competence and others which are not. Everyone who has any practical experience of the law realises that all justice is rough justice and knows how hard it is, by the processes of evidence, to get at the inner truth of any situation and, when the rights and wrongs of married relations are the subject-matter of the inquiry, how uncertain is the result and how degrading the attempt to probe them. Apart from anything else, the infinite variations of the relationship make every case a special case. But if in subservience to the economic pre-occupation of the age it is felt necessary to define by law in what proportions the income of the spouses should be shared there is, I suppose, something to be said for making neglect of the duty imposed an additional ground for divorce. One may end a marriage by process of law; one can hardly mend a marriage by process of law. To attempt it is like trying to perform an abdominal operation with a battle axe. Once the parties to a marriage have reached the point of demanding financial rights (as they see them) in public by the arbitration of strangers, married life to all fruitful intents and purposes must be at an end. From the point of view of maintaining the marriage, a decree for restitution of financial rights would be just about as effective as a decree for restitution of conjugal rights. That there should be liberality between the spouses is almost as important as that there should be love, but to try to enforce liberality by law is to confuse cause with effect. From the love there flows the liberality. But take it at a lower plane. The militant ladies who are so concerned about their rights may regard the race of men financially as closed oysters; even if they were, the best way to open an oyster is not with a rolling pin and that, in this context, is the equivalent of legal process.

RICHARD ROE.

BOOKS RECEIVED

Index to Income Tax Act, 1952. Compiled by JOHN GILBERT, A.C.I.S., F.C.T.C. pp. 68. Stanmore: Barkeley Book Company, Ltd. 7s. 6d. net.

"Key to Income Tax 1952/53." 34th Edition. By RONALD STAPLES. pp. 222. 1952. Taxation Publishing Co., Ltd. 7s. 6d. net.

"Current Law" Income Tax Acts Service ["Clitas"]. General Editor JOHN BURKE, Barrister-at-Law; Consulting Editor for Scots Law H. A. SHEWAN, O.B.E., Q.C., Advocate; Managing Editor R. R. KINGSLAND, B.A. (McGill); Editor-in-Chief Miss H. G. S. PLUNKETT, Barrister-at-Law (formerly one of H. M. Inspectors of Taxes); Contributors: P. W. E. TAYLOR, Barrister-at-Law, and A. L. PRICE, Barrister-at-Law. 1952. London: Sweet & Maxwell, Ltd.; Stevens & Sons, Ltd. Edinburgh: W. Green & Son, Ltd. £3 10s. net.

Finance Bill, 1952. Simon's Income Tax Service. 1952. pp. 68. London: Butterworth & Co. (Publishers), Ltd.

The Income Tax Act, 1952. By Miss H. G. S. PLUNKETT, Barrister-at-Law (formerly one of H. M. Inspectors of Taxes), assisted by P. W. E. TAYLOR, Barrister-at-Law, and A. L. PRICE, Barrister-at-Law; Consultant for Scots Law H. A. SHEWAN, O.B.E., Q.C., Advocate. 1952. London: Sweet & Maxwell Ltd.; Stevens & Sons, Ltd. Edinburgh: W. Green & Son, Ltd. 30s. net.

Latey on Divorce. 14th Edition. Editor-in-Chief WILLIAM LATEY, M.B.E., Q.C., of the Middle Temple, assisted by JOHN LATEY, M.B.E., B.A., of the Middle Temple, Barrister-at-Law; Editors: J. B. GARDNER, M.A., of the Inner Temple, Barrister-at-Law, and D. R. Le B. HOLLOWAY, LL.B. (Hons.), of the Divorce Registry. 1952. pp. cv and (with Index) 1541. London: Sweet & Maxwell, Ltd. £6 6s. net.

The Stock Exchange Official Year-Book. Volume 1. Editor-in-Chief SIR HEWITT SKINNER, Bt. 1952. pp. clii and 1845. London: Thomas Skinner & Co. (Publishers), Ltd. £7 net (for the two volumes).

Contingency Insurance: Some Notes. Reprinted from Volume 48 of the Journal of the Chartered Insurance Institute. By G. L. WATKINS, F.C.I.I. pp. 225-234. London: The Chartered Insurance Institute. 2s. net.

The Law Relating to Building and Engineering Contracts. By W. T. CRESWELL, Q.C. Fifth Edition by T. R. D. DAVIES, B.Sc., of Gray's Inn, Barrister-at-Law. 1952. pp. xxi and (with Index) 442. London: Sir Isaac Pitman & Sons, Ltd. 30s. net.

An Introduction to Evidence. By G. D. NOKES, LL.D., of the Middle Temple and the South-Eastern Circuit, Barrister-at-Law, Reader in English Law in the University of London. 1952. pp. xxxii and (with Index) 427. London: Sweet & Maxwell, Ltd. 35s. net.

REVIEWS

Public Rights of Way and Access to the Countryside. By PETER DOW, M.A. (Cantab.), and QUENTIN EDWARDS, both of the Middle Temple and the South-Eastern Circuit, Barristers-at-Law. 1951. London: Shaw & Sons, Ltd. 35s. net.

This book is concerned first and foremost to set out the law relating to public rights of way, but a chapter is devoted to public rights of access to the countryside.

Although all highways, including carriageways, are public rights of way, the term "right of way" is more commonly used in a restricted sense meaning public footpaths and bridleways only, and it is with these that the book is principally concerned.

While the coming into force of the National Parks and Access to the Countryside Act, 1949, undoubtedly inspired the book, it does not treat only of the Parts of this Act relating to its subject-matter, but it deals also with other statutes and the common law. Part III of the book, entitled "Evidence," will be found of particular interest.

The authors have done their work well and carefully, and there are a full index and tables of statutes and cases; the Rights of Way Act, 1932, and the relevant extracts from the 1949 Act and from other statutes, together with certain Ministerial circulars, are set out in an appendix.

Many solicitors will have occasion in the coming months to advise owners on the draft maps of rights of way now being prepared under Pt. IV of the 1949 Act, and to these this book will be especially useful.

Abstract of Legal Preliminaries to Marriage in the United Kingdom and the other countries of the British Commonwealth of Nations, and in the Irish Republic. 1951. London: H.M.S.O. 6s. net.

This booklet, the only previous edition of which was printed in 1908, is a handy reference to the requirements of the marriage laws of each territory. The material was contributed by the governments concerned, and consists of information on the relevant statutes in force, the various

requirements which must be fulfilled before a person is competent to marry, how the necessary notice of marriage must be given, the times and places at which marriages may take place and the persons by whom they may be solemnised. Owing to delay in publication, it is stated, it may be assumed that the position is given as it was in the latter part of 1947.

Justice in Magistrates' Courts. By FRANK J. POWELL, of the Middle Temple, Metropolitan Stipendiary Magistrate. With a Foreword by the Hon. Mr. Justice CASSELS. 1951. London: Sir Isaac Pitman & Sons, Ltd. 16s. net.

A young student of social science was recently being shown round a magistrates' court and her guide paused before a bookcase containing a number of books on penology, juvenile crime, the work of magistrates and elementary law, for the use of the justices. Surprise showed on her face and she remarked, "We are taught that no magistrates ever read books of this kind." It still seems to be the impression among many people, unfortunately, that justices generally are ill-equipped to deal with the problems which they must seek to solve when they sit in judgment. Mr. Powell's book has been written, as he says in his Preface, not primarily as a legal text-book but as an attempt to state in plain language the main principles of practice, evidence and procedure in magistrates' courts and to call attention to some of the problems which arise there and to the provision made by the State for the treatment of offenders.

Each reviewer, of course, will have his own opinion as to the form and content of a book designed to guide lay magistrates. In the present reviewer's opinion, at any rate, Mr. Powell has succeeded admirably in his task. He uses simple and non-technical language, he does not burden the text with unnecessary detail and, above all, he does not attempt the task, almost impossible because of its magnitude, of sketching the law in respect of the various offences and other matters which will come before magistrates. The book will undoubtedly be of great value to new magistrates as a clear account of their duties and one who studies it along with the latest edition of "Hayward and Wright's Office of Magistrate" will be adequately equipped for the legal side of his work in the adult court.

Company Meetings. By W. F. TALBOT, F.C.I.S., F.T.I.I. 1951. London: Stevens & Sons, Ltd. 22s. 6d. net.

Share Transfer and Registration. Business Law and Administration Series No. 2. By A. K. MARTIN, F.C.I.S. 1951. London: Stevens & Sons, Ltd. 20s. net.

These books are two of the first of "Business Law and Administration," a series of practical studies designed to produce contributions likely to be of value and interest to the business man and his professional advisers. Both are well written and sound expositions of their respective subjects and can as such be recommended. Their price is not unduly high, although as regards "Company Meetings" one cannot but remember that "Crew" costs only 10s. 6d. and is a recognised authority on the subject.

NOTES OF CASES

COURT OF APPEAL

DISSOLUTION OF PARTNERSHIP: COVENANT TO DISCHARGE ALL LIABILITY FOR INCOME TAX, EXCESS PROFITS TAX AND PROPERTY TAX: WHETHER SUR-TAX INCLUDED

Conway *v.* Wingate and Another

Singleton, Birkett and Morris, L.JJ. 5th March, 1952

Appeal from Parker, J.

The plaintiff and the first defendant, Mrs. W, were partners in a business of which the second defendant, W, her husband, was manager. Differences having arisen, a deed was drawn up by the plaintiff's solicitor and executed by the parties whereby the plaintiff as vendor assigned his half share in the partnership assets to W as purchaser. The deed contained a clause by which the defendants covenanted "to pay and discharge . . . all liability (including that of the vendor personally) for income tax, excess profits tax and property tax of and relating to the said partnership" to date. On the refusal of the defendants to discharge the plaintiff's liability for sur-tax, he brought an action claiming that they were liable to indemnify him against such proportion of his liability to sur-tax as his share in the profits bore to his total income in certain specified years. Parker, J., gave judgment for the defendants. The plaintiff appealed.

SINGLETON, L.J., said that a partnership was assessed for income tax, and each member was liable for the discharge of his proportionate share of the sum assessed. The plaintiff had contended that the words "including that of the vendor personally" could only refer to sur-tax, but it appeared probable that they had been introduced from an abundance of caution. The parties were all well acquainted with the partnership affairs, so that the defendants would know their future liability for income tax, but not for sur-tax, if that was included in the indemnity to the plaintiff. The three taxes named in the deed all related to the partnership business, but sur-tax did not. The latter tax was levied on an individual, and did not fall within the expression "of and relating to the said partnership." The appeal should be dismissed.

BIRKETT and MORRIS, L.JJ., agreed. Appeal dismissed.

APPEARANCES: *H. V. Lloyd-Jones*, Q.C., and *N. Bridge* (*Maltz, Mitchell & Co.*); *Ashe Lincoln*, Q.C., and *E. K. I. Hurst* (*Ponsford & Devenish*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

AGRICULTURAL HOLDING: RIGHT OF LANDLORD TO ENFORCE CLAIM FOR DILAPIDATIONS BY ACTION

Gulliver *v.* Catt

Singleton, Birkett and Morris, L.JJ. 7th March, 1952

Appeal from Barry, J.

The defendants were the tenants and the plaintiff was the landlord of an agricultural holding, under an agreement which provided that the tenants should keep the buildings, hedges and ditches in proper repair and condition. On 16th December, 1947, the landlord gave notice to quit, to take effect at Michaelmas, 1949. On 1st March, 1948, Pt. III of the Agriculture Act, 1947, came into force. On 30th July, 1948, the Agricultural Holdings Act, 1948 (whose provisions are not materially distinguishable), came into force. In 1950, as the tenants had not quitted, the landlord issued a writ claiming possession and damages for breaches of covenant. Barry, J., held that the notice to quit was good, and that the landlord was entitled to sue for damages in the action in lieu of claiming compensation under the Act of 1948. The tenants appealed on the latter point; they did not go out of possession until two days before the hearing of the appeal. The Act of 1948 provides by s. 57 (1) that the landlord of an agricultural holding "shall be entitled to recover from a tenant . . . on the tenant's quitting the holding on the termination of the tenancy" compensation for dilapidations or damage occasioned by bad husbandry. By subs. (3), the landlord "may in lieu of claiming compensation under subs. (1) . . . claim compensation in respect of matters specified therein under and in accordance with a written contract of tenancy . . ." By s. 70, "(1) . . . any claim of whatever nature by the . . . landlord of an agricultural holding against his . . . tenant, being a claim which arises– (*a*) under . . . any . . . agreement; and (*b*) on or out of the termination of the tenancy of the holding . . . shall . . . be determined by arbitration under this Act . . . (6) This section shall not apply to a claim arising on or out of the termination of a tenancy before the first day of March, 1948." By s. 99, ". . . where the tenant . . . has quitted the holding before the commencement of this Act, or quits it after [that date] in consequence of a notice to quit . . . given before the first day of March, 1948," the provisions of the Act relating to compensation shall not apply, "and in lieu thereof the provisions [of the Act of 1923] shall continue to apply . . ." On appeal, the tenants contended that the claim for dilapidations was enforceable only by arbitration under the Act, as (i) it

was a claim for compensation under s. 57 (3), so that (ii) the compulsory arbitration provisions of s. 70 applied, and (iii) s. 99 could not apply, as the defendants had not quitted the holding at the date of the hearing below.

SINGLETON, L.J., said that s. 57 could only apply if the tenant had quitted the holding, and it did not make sense for the tenant both to refuse to quit and to insist that the landlord could only obtain damages under arbitration procedure which was only applicable after the tenant had quitted. Accordingly, s. 57 did not apply, and the compulsory arbitration proceedings under s. 70 could not be invoked by the tenant. As to s. 99, it was admitted that if a tenant is given notice to quit, and the notice is subsequently held to be good, and the tenant goes out under an order of the court, he goes out in consequence of the notice (see *Preston* v. *Norfolk C.C.* [1947] 1 K.B. 775). Here the notice was given before the relevant date; accordingly, s. 99 applied to take the case out of the ambit of ss. 57 and 70. The landlord was accordingly entitled to enforce his claim by action, and the appeal failed.

BIRKETT and MORRIS, L.JJ., agreed. Appeal dismissed.

APPEARANCES: *Percy Lamb*, Q.C., and *D. Peck* (*Blyth, Dutton, Wright & Bennett*, for *Menneer, Idle & Brackett*, St. Leonards); *F. S. Laskey* (*Edwin Coe & Calder Woods*, for *Tomkins & Bowes*, Bexhill).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

CHANCERY DIVISION

NON-CHARITABLE TRUSTS: UNCERTAINTY: ABSENCE OF BENEFICIARIES: INDEFINITENESS OF PURPOSES

***In re* Astor's Settlement Trusts**

Roxburgh, J. 2nd April, 1952

By a settlement of 27th February, 1945, made between Lord Astor, Mr. David Astor and certain trustees, 49,997 £1 shares in the Observer, Ltd., were settled. The settlement provided that the income of the trust funds should during a specified period be paid or applied for or towards "all or any of the objects or purposes mentioned in the third schedule hereto" as Lord Astor or Mr. David Astor should direct; the objects or purposes enumerated in the third schedule were public purposes, some of which were non-charitable, and no individuals were named as beneficiaries or objects of the trust. While the learned judge held that the other trusts of the settlement, including certain trusts for accumulation and residuary trusts, were valid, the question arose whether the trusts relating to the income of the trust funds were valid.

ROXBURGH, J., said that it was common ground that none of these trusts or purposes offended the rule against perpetuities and that they were not charitable. It was argued that the trusts now in question were void on two grounds: (1) that they were not trusts for the benefit of individuals; (2) that they were void for uncertainty. Lord Parker dealt with the first of these questions in *Bowman* v. *Secular Society* [1917] A.C. 406, 437 and 441; Lord Parker said (at p. 441): "A trust to be valid must be for the benefit of individuals . . . or must be in that class of gifts for the benefit of the public which the courts recognise as charitable in the legal as opposed to the popular sense of that term." It was difficult to visualise the growth of equitable obligations which nobody could enforce, and Lord Parker's proposition would, *prima facie*, appear to be well founded. No case had been found in the reports in which the court had ever enforced a non-charitable purpose against a trustee and no officer had ever been constituted to take in the case of non-charitable purposes the position held by the Attorney-General in connection with charitable purposes. Indeed, where, as in the present case, the only beneficiaries were purposes and an at present unascertainable person, it was difficult to see who could initiate such proceedings. He (the learned judge) had, therefore, come to the conclusion that the trusts in question were void on the first of the two grounds submitted. As regards the second ground, the purposes (to be valid) must be so defined that, if the trustees surrendered their discretion, the court could carry out the purposes declared, not a selection of them arrived at by eliminating those which were too uncertain to be carried out. It was not possible for him (the learned judge) to decree in what manner the trusts applicable to income were to be performed, and, accordingly, the trusts were also void on the second ground. While he (the learned judge) had reached his decision on two separate grounds, their origin was a single principle, namely, that a court of equity did not recognise as valid a trust which it could not both enforce and control.

APPEARANCES: *E. I. Goulding; Neville Gray*, Q.C., and *Wilfrid Hunt; Raymond Jennings*, Q.C., and *E. M. Winterbotham* (*Janson, Cobb, Pearson & Co.*); *Denys Buckley* (*Treasury Solicitor*).

[Reported by CLIVE M. SCHMITTHOFF, Esq., Barrister-at-Law.]

QUEEN'S BENCH DIVISION

SALE OF GOODS: FORCE MAJEURE CLAUSE

Brauer & Co. (Great Britain), Ltd. *v.* James Clark (Brush Materials), Ltd.

Sellers, J. 1st April, 1952

Special case stated by arbitrators.

By a contract of sale the sellers sold to the buyers, c.i.f. London, certain goods to be shipped from Brazil in the period February-July, 1951. On 20th June, 1951, the sellers informed the buyers that the Bank of Brazil would not permit shipments to be made except at prices substantially above those specified in the contract. A clause in the contract provided: "Should shipment be prevented or delayed owing to prohibition of export . . . *force majeure* . . . shipper shall be entitled . . . to an extension of time . . . if, from any of the above causes, shipment be not completed within one month after the expiration of the original contract period then this contract is to be void for any unfilled quantity." The contract further provided: "This contract is subject to a Brazilian export licence." No goods were ever shipped. The sellers, while contending that the intervention of the bank constituted *force majeure*, admitted that export licences would have been obtainable for shipment at the prices required. The arbitrators found in favour of the buyers, subject to the opinion of the court.

SELLERS, J., said that the phrase "*force majeure*" in relation to commercial contracts had been considered by McCardie, J., in *Lebeaupin* v. *Richard Crispin & Co.* [1920] 2 K.B. 714; 36 T.L.R. 739, where he reviewed the authorities and held that it comprised "any direct legislative or administrative interference . . . for example, an embargo." The buyers had contended that, on the authorities, such interference must mean physical or legal prevention, not mere insistence on a rise in price. It seemed that the sellers could not rely on *force majeure*, as their admission that they could have made the necessary shipments if they had paid the higher prices negatived the idea of embargo or prevention. The sellers had further relied on the provision regarding the export licence, and contended that, if it had been obtained, it would have related to the performance of a contract other than that which the parties had made, in view of the rise in prices. If the licence clause did not protect the sellers, would they be protected in the event of a price one hundred times greater being required by the Brazilian authorities? The contract contemplated that the sellers would use due diligence to obtain a licence to fulfil the contract which had been made; although they could not complain if the market went against them, to hold on this point in favour of the buyers would mean that the sellers would have to make delivery notwithstanding a rise in price so great as to amount to an embargo or complete prohibition, provision for which was clearly made in the contract in favour of the sellers. Accordingly, the arbitrators had erred in law and the sellers were entitled to succeed.

APPEARANCES: *E. W. Roskill* (*Gregory, Rowcliffe & Co.*, for *Bartlett & Son*, Liverpool); *T. G. Roche* (*Layton & Co.*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

COURT OF CRIMINAL APPEAL

PRACTICE NOTE

CRIMINAL LAW: AWARD FROM LOCAL FUNDS TO PERSONS ACQUITTED

Lord Goddard, C.J., Ormerod and Parker, JJ. 24th March, 1952

LORD GODDARD, C.J., made the following statement: We desire to take this opportunity to correct some misapprehension which appears to have arisen about the exercise of the power conferred by s. 44 of the Criminal Justice Act, 1948, to award the payment of costs out of local funds to a person who has been acquitted on his trial. The misunderstanding may have arisen out of a circular sent, after consultation with the judges of this Division, to chairmen of quarter sessions and recorders in

November, 1948, and we think that this circular may have been construed in a more rigid manner than was intended. In the circular the judges approved a circular that had been sent out by the Home Office to the effect that costs under s. 44 should be awarded only in exceptional circumstances. Some instances of exceptional circumstances were given, but they were intended only as examples and not as a comprehensive list. Let me reiterate the principle which the judges think should be followed in this matter. While s. 44 in terms imposes no limit on the discretion of the court, it was never intended, and it would be quite wrong, that costs should be awarded as of course to every defendant who is acquitted. Its use should be reserved for exceptional cases, and every case should be considered by the court on its own merits. I may add that a reference to Hansard (449 H.C. Deb. 53, 1294) shows that this is in accordance with what the Attorney-General stated in Parliament was the intention of the clause when it was being considered in committee.

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

SURVEY OF THE WEEK

HOUSE OF LORDS

PROGRESS OF BILLS

Read First Time :—

Llanelly District Traction Bill [H.L.] [8th April.
London County Council (Holland Park) Bill [H.C.] [4th April.

Read Second Time :—

Army and Air Force (Annual) Bill [H.C.] [8th April.
Hydro-Electric Development (Scotland) Bill [H.C.] [8th April.
Miners' Welfare Bill [H.C.] [7th April.

Read Third Time :—

Cinematograph Film Production (Special Loans) Bill [H.C.] [8th April.
Export Guarantees Bill [H.C.] [8th April.
Leamington Corporation Bill [H.L.] [7th April.
Metropolitan Police (Borrowing Powers) Bill [H.C.] [7th April.
Port of London Bill [H.L.] [7th April.

In Committee :—

Poaching of Deer (Scotland) Bill [H.L.] [8th April.

HOUSE OF COMMONS

PROGRESS OF BILLS

Read First Time :—

Agriculture (Ploughing Grants) Bill [H.C.] [10th April.
To authorise the payment out of moneys provided by Parliament of grants in respect of the ploughing up of land under grass and the carrying out of further operations on the land after ploughing.

Care of Senile Persons (Scotland) Bill [H.C.] [8th April.
To permit in Scotland the reception into and maintenance in mental hospitals and similar institutions for the purpose of care and attention of senile persons without certification of insanity or lunacy ; and for purposes connected with the matters aforesaid.

Read Second Time :—

Essex County Council Bill [H.C.] [9th April.
Finance Bill [H.C.] [7th April.
Pier and Harbour Provisional Order (Falmouth) Bill [H.C.] [9th April.

In Committee :—

National Health Service Bill [H.C.] [9th April.

STATUTORY INSTRUMENTS

Aliens (Approved Ports) Order, 1952. (S.I. 1952 No. 710.)
Aliens (Registration Certificates) Regulations, 1952. (S.I. 1952 No. 709.)
Cinematograph Films (Exhibitors) Regulations, 1952. (S.I. 1952 No. 687.) 5d.
Cinematograph Films (Registration) Regulations, 1952. (S.I. 1952 No. 688.)
Copper, Zinc, etc., Prices Order, 1952. (S.I. 1952 No. 729.) 6d.
Draft **Double Taxation Relief** (Taxes on Income) (Finland) Order, 1952. 8d.
Draft Double Taxation Relief (Taxes on Income) (Guernsey) Order, 1952. 6d.
Draft Double Taxation Relief (Taxes on Income) (Jersey) Order, 1952. 6d.
Draft Double Taxation Relief (Taxes on Income) (Kenya) Order, 1952. 6d.
Draft Double Taxation Relief (Taxes on Income) (Tanganyika) Order, 1952. 6d.
Draft Double Taxation Relief (Taxes on Income) (Uganda) Order, 1952. 6d.
Draft Double Taxation Relief (Taxes on Income) (Zanzibar) Order, 1952. 6d.
Exchange Control (Authorised Dealers) Order, 1952. (S.I. 1952 No. 707.)
Exchange Control (Authorised Depositaries) Order, 1952. (S.I. 1952 No. 708.)
Fats, Cheese and Tea (Rationing) (Amendment) Order, 1952. (S.I. 1952 No. 728.)
Import Duties (Drawback) (No. 4) Order, 1952. (S.I. 1952 No. 698.) 5d.
Metropolitan Water Board (Extension of Operation of Byelaws) Order, 1952. (S.I. 1952 No. 703.)
Draft **National Assistance** (Determination of Need) Amendment Regulations, 1952.
National Health Service (Designation of Teaching Hospitals—Charing Cross Hospital) Order, 1952. (S.I. 1952 No. 694.)
Pensions (Governors of Dominions, etc.) Order, 1952. (S.I. 1952 No. 720.)
Pin, Hook and Eye, and Snap Fastener Wages Council (Great Britain) Wages Regulation (Holidays) Order, 1952. (S.I. 1952 No. 699.) 6d.
Pre-Entry of Goods Order, 1939, Amendment Order, 1952. (S.I. 1952 No. 719.)
Public Health (Tuberculosis) Regulations, 1952. (S.I. 1952 No. 704.) 5d.
River Nene Catchment Board (Reconstitution of the Hundred of Wisbech Internal Drainage Board) Order, 1952. (S.I. 1952 No. 721.) 5d.
Road Haulage Wages Council Wages Regulation Order, 1952. (S.I. 1952 No. 661.) 1s. 2d.
Teachers Superannuation (Reciprocity with Southern Rhodesia) Revoking Scheme, 1952. (S.I. 1952 No. 706.)
Wild Birds Protection (Caernarvon) Order, 1952. (S.I. 1952 No. 689.)
Wild Birds Protection (Cardigan) Order, 1952. (S.I. 1952 No. 697.)

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., 102–103 Fetter Lane, E.C.4. The price in each case, unless otherwise stated, is 4d., post free.]

OBITUARY

MR. C. W. ELLISON

Mr. Charles Welldon Ellison, solicitor, of Cambridge, died on 4th April. He was admitted in 1896.

MR. J. R. PULLON

Mr. John Robertson Pullon, LL.B., solicitor, of High Holborn, London, W.C.1, died on 8th April. He was admitted in 1905, was a Travers-Smith Scholar and Law Society's Prizeman, and had been one of The Law Society's assistant examiners since 1914.

MR. W. H. STRUTHERS

Mr. William Harley Struthers, LL.B., solicitor, of Sevenoaks, died on 25th March, aged 36. He was admitted in 1942.

MR. B. THOMPSON

Mr. Basil Thompson, solicitor, of Molesworth Street, Dublin, died on 6th April. He was born in 1878. Admitted in 1900, he was president of the Incorporated Law Society of Ireland in 1927.

POINTS IN PRACTICE

Questions from solicitors who are REGISTERED ANNUAL SUBSCRIBERS are answered without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 102-103 Fetter Lane, E.C.4, and contain the name and address of the subscriber, and a stamped addressed envelope.

Rent Acts—Sale with Vacant Possession of Part—Owner Sharing Accommodation—Application of Acts

Q. A dwelling-house was occupied by two tenants who shared the kitchen or scullery. One of these tenants (who happened to be the then owner's daughter) left and the house was sold with part possession to my client. The position now is that the present owner shares the property with the remaining tenant. It would appear that both tenants were protected prior to the sale. The question now is whether the present tenant has the benefit of the Rent Acts or whether the owner now sharing accommodation can claim possession.

A. At the time when the present tenant shared the kitchen or scullery with the previous landlord's daughter the Rent Restrictions Acts applied by virtue of s. 8 (1) of the Landlord and Tenant (Rent Control) Act, 1949. The application of the principal Acts in this way includes s. 12 (6) of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, which provides that once the Act has become applicable to any dwelling-house it shall continue to apply whether or not the dwelling-house continues to be one to which the Act applies. While appreciative of the difficulties of interpretation of this subsection, our opinion is that it would apply in the present case to continue the protection of the tenant notwithstanding that his kitchen accommodation is shared with his new landlord. A further consideration is that, if the tenant had become a statutory tenant before the purchase by the present landlord, there would not appear to be subsisting between them any contract of tenancy so as to bring into operation s. 7 of the 1949 Act, thus depriving the tenant even of the limited protection afforded by the Furnished Houses (Rent Control) Act, 1946. Although it is possible that the complete deprivation of protection is the unintended result of the present position, we think it unlikely that the court would so hold having regard to s. 12 (6) of the 1920 Act.

Estate Duty—Ultimate Incidence of Liability among Beneficiaries

Q. Assuming a testator has made no reference in his will as to how estate duty on certain specific devises and gifts of freehold, leasehold and personal effects should be borne, are the duties on such devises and gifts a charge against the residue, or should they be borne by the respective devisees and legatees?

A. Estate duty on specific legacies of personalty (including leaseholds) is a "testamentary expense," and in the absence of any direction in the will that the legatee is to bear the duty it must be paid like other testamentary expenses out of the general estate in the order laid down by the Administration of Estates Act, 1925, Sched. I, Pt. II (*Re Kempthorne* [1930] 1 Ch. 268; *Re Tong* [1931] 1 Ch. 202; *Re Prévité* [1931] 1 Ch. 447). Estate duty on realty is not, however, a testamentary expense, and, therefore, in the absence of contrary directions in the will the devisee will bear the duty on the property devised to him (*Re Prévité, supra*). Where a pecuniary legacy is payable out of a mixed fund of realty and personalty, that legacy must, in the absence of direction to the contrary, bear a proportion of estate duty corresponding to the amounts of the respective kinds of property comprising the fund (*Re Owers* [1941] Ch. 17). Where the duty on specific bequests of personalty is payable out of the property undisposed of by will or the general residuary estate in accordance with Pt. II of Sched. I to the Administration of Estates Act, 1925, or some other category in that Schedule, the personalty in any one category has to be exhausted before the realty in the same category can be resorted to. The reason for this is that s. 53 (3) of the Administration of Estates Act, 1925, expressly provides that nothing contained in the Act is to alter the incidence of any death duties.

Small Dwellings Acquisition Acts, 1899-1923—Rate of Interest on Advances—Housing Act, 1935, s. 92 (2)—"Date on which Terms . . . Settled"

Q. In December, 1951, a client of ours applied to the X Rural District Council for a loan by instalments under the Small Dwellings Acquisition Acts, 1899 to 1923, for the purpose of erecting a bungalow. At a council meeting held on 14th December, 1951, it was agreed that our client should receive an advance of £1,600. As you will be aware, the rate of loan interest prior to 10th November, 1951, was 3 per cent. in respect of loans for more than fifteen years. On this date the rate was increased to 3¾ per cent. and it has recently been increased to 4¼ per cent. By virtue of s. 92 (2) of the Housing Act, 1935, the rate of interest on advances made by local authorities under the provisions of the Small Dwellings Acquisition Acts is fixed at a rate of ¼ per cent. in excess of the rate of interest which, one month before the date on which the terms of the loan or advance are settled, was the rate fixed by the Treasury in respect of loans from the Local Loans Fund to local authorities for housing purposes. We are acting for the X Rural District Council as well as for our client mortgagor in connection with this matter, and although the mortgage to the council has not yet been signed by our client, we can obtain his signature thereto within the course of the next few days. We are a little uncertain as to the precise meaning of the words "one month before the date on which the terms of the loan or advance are settled." Is it your opinion that our client will have to pay interest at the new rate of 4¼ per cent?

A. In the absence of any judicial or other interpretation of s. 92 (2) of the Housing Act, 1935, our opinion is that the expression "date on which the terms of the loan or advance are settled" means the date when the council determines to make a loan in any particular case and fixes the amount, period of repayment and rate of interest. In this case such determination was made on 14th December, 1951, and we consider that the interest payable by the borrower should be ¼ per cent. above the rate fixed by the Treasury and in operation on 14th November, 1951. On this basis the date of the mortgage is immaterial.

Enlargement of Long Term—Law of Property Act, 1925, s. 153—Meaning of "Liable to be Determined"

Q. We act for the purchaser of a term of 5,000 years at a nominal rent of 1s. *per annum*, which rent has not been collected for over twenty years. *Prima facie* there is opportunity here for enlargment of the term to a fee simple, but we are given pause by s. 153 (2) (i) of the Law of Property Act, 1925. This subsection states that the previous section permitting enlargement in certain circumstances will not apply to "any term liable to be determined by re-entry for condition broken." The term in question contains a proviso for re-entry for condition broken. Does subs. (2) (i) therefore automatically bar enlargment or only if the term is "liable to be determined," i.e., when a condition has been broken and the right of re-entry is exercisable?

A. We have not been able to trace any authority on the construction of the words "liable to be determined by re-entry for condition broken" in s. 153 (2) (i) of the Law of Property Act, 1925, nor in relation to the previous similar provision in s. 11 of the Conveyancing Act, 1882. The decisions on the section (and the corresponding s. 65 of the Conveyancing Act, 1881), such as *Re Smith and Stott* (1883), 29 Ch. D. 1009*n*; *Re Chapman and Hobbs* (1885), 29 Ch. D. 1007; *Blaiberg* v. *Keeves* [1906] 2 Ch. 175, do not refer to the question of whether "liable to be determined" means "containing a proviso for determination" or "capable of immediate determination by reason of a condition having been broken." Cases on the meaning of "liable" in other contexts do not really assist, although the decision in *Re Soltau's Trust* [1898] 2 Ch. 629, that "liable to be laid out in the purchase of land" in ss. 32 and 33 of the Settled Land Act, 1882 (now ss. 76 and 77 of the Settled Land Act, 1925), means "subject to some disposition under which it may be laid out in the purchase of land," seems to us to lean towards a more general construction of the word "liable." The forms in the modern books of precedents merely give recitals in the bare words of the statute (see, e.g., Prideaux's Precedents in Conveyancing, 24th ed., vol. 1, p. 822). In s. 7 (1) of the Law of Property Act, 1925, there is a reference to a fee simple which "is liable to be divested" under the School Sites Acts, and in that context we consider it clear that immediate divesting is not necessarily contemplated. While, in the absence of authority, we would wish to retain an open mind on the matter, our opinion is that a term of years which is subject to a proviso for re-entry for condition broken cannot be enlarged under s. 153, even if no occasion for the exercise of the right of re-entry has occurred.

NOTES AND NEWS

Honours and Appointments

Her Majesty The Queen has been pleased to approve, on the recommendation of the Lord Chancellor, the names of the following gentlemen for appointment to the rank of Queen's Counsel: EDWARD JOHNSON RIMMER, PHINEAS QUASS, O.B.E., FRANK GAHAN, CECIL HARRY ANDREW BENNETT, NELSON EDWIN MUSTOE, MAURICE GRAVENOR HEWINS, JOHN BUSSÉ, C.B.E., PHILIP INGRESS BELL, HAROLD INFIELD WILLIS, EDWARD RYDER RICHARDSON, The Hon. BENJAMIN LUDLOW BATHURST, WALDO WILLIAM PORGES, FRANCIS JOHN WATKIN WILLIAMS, ROY ERNEST BORNEMAN, HUGH EVAN RIDLEY BOILEAU, RICHARD LIONEL EDWARDS, GEORGE GILLESPIE BAKER, O.B.E., RICHARD MARVEN HALE EVERETT, HENRY JOSCELINE PHILLIMORE, O.B.E., EVAN RODERIC BOWEN.

Mr. R. F. JONES, clerk to the First Division Anglesey Magistrates, has been appointed clerk to the Aethwy Rural Council.

Mr. R. G. RUSHEN, of the Bournemouth Town Clerk's staff, has been appointed assistant solicitor to Hornchurch Urban District Council.

Mr. F. H. WILSON, assistant solicitor to Widnes Corporation, has been appointed assistant solicitor to Wallasey Corporation.

Personal Notes

On the retirement on 31st March of Mr. J. R. Bishop, prosecuting solicitor to Liverpool City Police, after twenty-three years' practice in the courts, tributes were paid by the Liverpool Stipendiary Magistrate, the Clerk to the Justices, colleagues and others.

At a dinner held to celebrate the completion of fifty years as a solicitor by Mr. W. C. Camm, president of the Dudley and District Solicitors' Association, the guests included Mr. A. J. Long, Q.C., leader of the Oxford Circuit, and Mr. Gilbert Griffiths, Recorder of Dudley.

Mr. A. P. Davies, solicitor and Town Clerk of Llandovery, has tendered his resignation to the borough council because of ill health.

Mr. C. S. Elwell, Coroner of Bath since 1931, has announced his resignation.

Mr. H. N. Tebbs, Superintendent Registrar of Births, Deaths and Marriages for the Bedford District since 1929, has resigned his appointment with effect from 31st March. He retains his office as clerk to Bedford Borough Magistrates.

Mr. E. R. White, solicitor, of Exeter, was married on 5th April to Miss Margaret Joyce Buston, of Exeter.

Miscellaneous

THE SOLICITORS ACTS, 1932 TO 1941

Pursuant to s. 7 (2) of the Solicitors Act, 1932, as amended by s. 21 of the Solicitors Act, 1941, JACK EDWIN PERCY PERRIER, of 19 Royal Square, St. Helier, Jersey, in the Channel Islands, solicitor, having, in accordance with the provisions of the Solicitors Acts, 1932 to 1941, made application to the Disciplinary Committee constituted under the Act that his name might be removed from the Roll of Solicitors at his own instance on the ground that he desires to be admitted as a student of the Inner Temple for the purpose of taking the Bar Final Examination, an order was, on the 3rd day of April, 1952, made by the committee that the application of the said Jack Edwin Percy Perrier be acceded to and that his name be removed accordingly from the Roll of Solicitors of the Supreme Court.

SOKE OF PETERBOROUGH COUNTY DEVELOPMENT PLAN

The above development plan was, on 28th March, 1952, submitted to the Minister of Housing and Local Government for approval. It relates to land situate within the Administrative County of the Soke of Peterborough and comprises land within the undermentioned districts: the Municipal Borough of Peterborough, the Rural District of Barnack, the Rural District of Peterborough. A certified copy of the plan as submitted for approval may be inspected from 9.30 a.m. to 1 p.m. and 2 p.m. to 4 p.m. (Saturdays 9.30 a.m. to 12 noon) at the undermentioned places:—

The County Planning Office, County Offices, Bridge Street, Peterborough.

Town Hall, Peterborough.

Barnack Rural District Council Offices, Ironmonger Street, Stamford.

Offices of the Peterborough Rural District Council, 49 Priestgate, Peterborough.

Any objection or representation with reference to the plan may be sent in writing to the Secretary, Ministry of Housing and Local Government, Whitehall, London, S.W.1, before 17th May, 1952, and should state the grounds on which it is made. Persons making an objection or representation may register their names and addresses with the County Council of the Administrative County of the Soke of Peterborough and will then be entitled to receive notice of the eventual approval of the plan.

NOTE: Copies of the county survey—rural areas (price 3s.) and county survey—City of Peterborough (price 4s. 6d.) and of the development plan, consisting of the written statement, county map and town map, and county and town programme maps (price 12s. 6d.) can be obtained from the County Planning Office, County Offices, Bridge Street, Peterborough.

COUNTY BOROUGH OF WEST BROMWICH DEVELOPMENT PLAN

The above development plan was, on 27th March, 1952, submitted to the Minister of Housing and Local Government for approval. It relates to all land situate within the County Borough of West Bromwich. A certified copy of the plan as submitted for approval may be inspected from 9 a.m. to 1 p.m. and 2 p.m. to 5 p.m. (Saturdays 9 a.m. to 12 noon) at the Town Planning Department, 320 High Street (First Floor), West Bromwich. Any objection or representation with reference to the plan may be sent in writing to the Secretary, Ministry of Housing and Local Government, Whitehall, London, S.W.1, before 31st May, 1952, and should state the grounds on which it is made. Persons making an objection or representation may register their names and addresses with the West Bromwich County Borough Council and will then be entitled to receive notice of the eventual approval of the plan.

CITY OF YORK DEVELOPMENT PLAN

The above development plan was, on 31st March, 1952, submitted to the Minister of Housing and Local Government for approval. It relates to land within the City and County of the City of York. A certified copy of the plan as submitted for approval may be inspected from 10 a.m. to 4 p.m. (Saturdays 10 a.m. to 11 a.m.) at the City Engineer and Town Planning Officer's Office, The Guildhall, York. Any objection or representation with reference to the plan may be sent in writing to the Secretary, Ministry of Housing and Local Government, Whitehall, London, S.W.1, before 14th May, 1952, and should state the grounds on which it is made. Persons making an objection or representation may register their names at the Town Clerk's Office, The Guildhall, York, and will then be entitled to receive notice of the eventual approval of the plan.

DEWSBURY COUNTY BOROUGH DEVELOPMENT PLAN

An amended notice of the above development plan states that the date before which objections or representations may be sent to the Ministry of Housing and Local Government is 19th May, 1952 (not 5th May, as stated in the notice printed at p. 218, *ante*).

ESTATE DUTY: EXTRA-STATUTORY CONCESSION

HOUSE OWNED AND OCCUPIED BY DECEASED

The Board of Inland Revenue have issued the following statement about the valuation of house property for estate duty purposes in cases where the extra-statutory concession (set out on pp. 10 and 11 of booklet No. 500, issued by the Board of Inland Revenue) as to vacant possession is applicable, because it

would seem that the scope of the concession is sometimes not clearly understood by executors and others.

Where the concession is applicable, "any increase in the market value above the pre-war value is disregarded in so far as it could only be realised by a sale with vacant possession." This does not mean simply that the house is to be valued at its pre-war value. In particular, the concession does not operate to exclude vacant possession value on the pre-war level or appreciation in value which is not attributable to vacant possession, e.g., a rise in the value of property due to a change in the value of money generally since before the war.

THE TRANSPORT ARBITRATION TRIBUNAL

PRACTICE DIRECTION NO. 3

CONFIRMATION OF AGREEMENTS UNDER SECTION 108 OF THE TRANSPORT ACT, 1947

The Transport Arbitration Tribunal has directed that, in applications to the Tribunal for confirmation of agreements as to the amount of compensation under Section 108 of the Transport Act, 1947, the statement the applicant is required to serve upon the respondent by Rule 18 of the Tribunal's Rules should contain an allegation, in the terms of the relevant paragraph or paragraphs of subsection (2) of that Section, of the grounds upon which the confirmation of the agreement is sought.

This Direction does not apply to proceedings which under Part VIII of the Act are to be treated as Scottish proceedings.

29th March, 1952.

J. A. ARMSTRONG,
Clerk to the Tribunal.

DISTRIBUTION OF GERMAN ENEMY PROPERTY ACT, 1949

The Board of Trade wish to remind those concerned that all claims under the Distribution of German Enemy Property (No. 2) Order, 1951, as amended (with the exception of those arising out of non-Reich Sterling bonds and *unenfaced* bonds of the Dawes and Young Loans) must be received by the Administrator on or before 1st May, 1952. Forms of claim may be obtained from the Administration of Enemy Property Department, Branch X, Theobalds Road, London, W.C.1.

A lecture on "The Problems of the Relations between Roman and Oriental Laws" will be given by Professor Edoardo Volterra, Professor in the Faculty of Law, University of Rome, at the School of Oriental and African Studies, University of London, W.C.1, at 5.30 p.m. on Monday, 28th April, 1952. The chair will be taken by Dr. S. G. Vesey-Fitzgerald, Q.C., formerly Professor of Oriental Laws in the University of London. The lecture is addressed to students of the University and to others interested in the subject. Admission is free, without ticket.

Wills and Bequests

Mr. W. S. Andrew, solicitor, of Swansea, left £39,400 (£38,003 net).

Mr. E. A. Ashby, retired solicitor, of Rhosneigr, Anglesey, left £9,227 (£9,124 net).

Mr. W. H. Brightman, retired solicitor, of Exmouth, formerly of Kenton, left £19,062 (£18,905 net).

Mr. J. M. Haslip, retired solicitor, of Twickenham, formerly of Cannon Street, London, E.C.4, left £96,693.

Mr. H. M. Leman, retired solicitor, of Nottingham, left £16,896 (£16,251 net).

Mr. W. T. Morland, solicitor, of Abingdon, left £19,631 (£19,291 net). He left £5 for each completed year of service with his firm to Horace Carter, Francis P. Farrow and Joan Bagot.

Mr. A. C. Moore, solicitor, of St. John's Wood, London, left £63,363 (£62,703 net).

Mr. E. C. Ouvry, retired solicitor, of Crockham Hill, Kent, formerly of Westminster, left £4,764 (£4,180 net).

Mr. J. W. Patterson, solicitor, of Leigh-on-Sea, left £38,490 (£38,117 net).

Mr. H. H. Warmington, solicitor, of Bournemouth, left £32,105 (£32,059 net).

SOCIETIES

The sixty-fourth annual general meeting of the MONMOUTHSHIRE INCORPORATED LAW SOCIETY was held at the Law Library, Newport, on 4th April, 1952, when the annual report of the Council was presented. Mr. G. Roy Jenkins was elected President for the ensuing year and Mr. D. W. Evans and Mr. R. Collis Bishop Vice-Presidents; Mr. J. Keeneth Wood, Honorary Treasurer; Mr. J. B. Rogers, Honorary Librarian and Mr. W. Pitt Lewis, Honorary Secretary. The following were elected members of the Council: Messrs. E. I. P. Bowen, J. Owen Davies, G. L. B. Francis, Roy M. Harmston, Vernon Lawrence, M. C. Llewellin, Arthur H. Pratt, J. B. Rogers, R. J. Rowlands and Bryan J. T. Williams.

The WORTHING LAW SOCIETY held its annual dinner at Warnes Hotel, Worthing, on Friday, 4th April, 1952, and it was attended by nearly 200 members and guests. The principal speakers were Mr. Justice Croom-Johnson and Mr. Justice Cassels, who responded to the toasts of "The Bench and The Bar" and "The Guests," which were proposed by Mr. J. E. Humphrey and Mr. W. G. S. Naunton (members of the Society) respectively. The toast of "The Worthing Law Society" was proposed by Mr. E. Clifford Smith, President of the Worthing and District Auctioneers' and Estate Agents' Association, and was responded to by Mr. A. Cobby, the President of the Worthing Law Society. The guests included the Mayor of Worthing, Councillor J. A. Frampton, J.P., Brigadier O. L. Prior-Palmer, D.S.O., M.P., and Sir Reginald Sharp, Q.C.

The SOLICITORS' ARTICLED CLERKS' SOCIETY announce a debate at The Law Society's Hall on Wednesday, 30th April, at 7.30 p.m. on the motion "That articled clerks are a menace to the profession." Inquiries regarding membership and activities of the Society should be made to the Secretary, the Solicitors' Articled Clerks' Society, c/o The Law Society's Hall, Chancery Lane, W.C.2.

The UNION SOCIETY of London (meetings in the Common Room, Gray's Inn, at 8.0 p.m.) announce the following programme: Tuesday, 22nd April, at 8.0 p.m., Ladies' Night Debate to be held in Niblett Hall, Inner Temple (by permission of the Benchers), Motion: "That this country should cease to try to be a Great Power"; proposed by Dr. C. E. M. Joad, opposed by Mr. Patrick F. Maitland, M.P. (Admission will be by ticket only. Tickets, price 3s. 6d. each, may be obtained from Mr. J. D. Shebbeare, 292 Lancaster Road, W.11, Phone: Park 6303, Central 1401 (day); Mr. M. I. Mail, St. Paul's Chambers, 19–23 Ludgate Hill, E.C.4, Phone: City 3044; tickets will also be on sale at the door.) Wednesday, 30th April: "That this House would welcome sponsored broadcasting"; Wednesday, 7th May: "That this House does not desire to see a United Germany"; Wednesday, 14th May: "That this House despises Dame Fashion"; Wednesday, 21st May: "That British parliamentary government is being undermined by the two-party system."

At the monthly meeting of the Board of Directors of the SOLICITORS BENEVOLENT ASSOCIATION held on 2nd April, 1952, 23 solicitors were admitted to membership of the Association, bringing the total membership to 7,650. A sum of £4,150 was distributed by way of annuities and grants to 39 beneficiaries; £670 of this sum was in respect of special grants for convalescence, clothing, etc. The beneficiaries include the daughter of a member who died in 1899 after many years of ill health. His daughter helped to maintain the family by teaching, but was obliged to apply for relief in 1932 when her own health broke down. Now over seventy years of age she is able, with the Association's help, to share a cottage with an elderly friend. Her grants to date exceed £1,800.

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Contributions are cordially invited and should be accompanied by the name and address of the author (not necessarily for publication).